IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

OP.No. 26162 of 2000(M)

PETITIONER:

P.K. NEDUNGADI BROTHERS,
(WHITE SHOP), G.B. ROAD,
PALAKKAD – 678 014 REP. BY SRI.K. SREEKUMAR,
(MANAGING PARTNER).

BY ADV. SRI.T.M.SREEDHARAN
SRI.N.UNNIKRISHNAN
SMT.M.LALITHA NAIR

RESPONDENTS:
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1. THE REGIONAL PROVIDENT FUND COMMISSIONER,
BHAVISHYA NIDHI BHAVAN, ERANHIPALAM,
CALICUT – 673 006.

2. THE PROVIDENT FUND INSPECTOR,
MUNICIPAL BUS STAND COMPLEX,
PALAKKAD.

BY ADV. SRI.N.N.SUGUNAPALAN
SRI.MATHEWS J.NEDUMPARA, SC,P.F.ORGSN.
SRI.THOMAS MATHEW NELLIMOOTTIL,SC, P.F.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.43936 OF 2000 IN OP.NO.26162/2000-M

DISMISSED

12.9.2007 SD/= ANTONY DOMINIC, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 COPY OF THE ORDER NO.KR/4415/ENT./II(5) 77 DTD 3.12.77 ISSUED BY R1.

EXT.P2 COPY OF NOTICE DTD 2.2.2000 ISSUED BY R1.

EXT.P3 COPY OF LETTER DTD 24.4.00 SUBMITTED BY THE PETITIONER BEFORE R1.

EXT.P4 COPY OR ORDER DTD 18.7.00 IISSUED BY R1.

EXT.P5 COPY OF NOTIFICATION NOS.35019/467/77-PF.II DTD 7.2.78 ISSUED IN THE CASE OF M/S. SAREE MUSEUM.

EXT.P6 COPY OF INSPECTION REPORT DTD 24.9.98 ISSUED BY THE PROVIDENT FUND INSPECTOR, PALAKKD.

EXT.P7 COPY OF REPLY DTD 25.9.98 SUBMITTED BY THE EPTITIONER TO R1.

EXT.P8 COPY OF REPORT DTD 29.6.00 SUBMITTED TO R1 BY THE ENFORCEMENT OFFICER.

RESPONDENTS' EXHIBITS:

EXT R7(a) COPY OF THE REQUEST LETTER DTD 5.8.88 MADE BY NEDUNGADI BIG SHOP.

EXT.R7(b) COPY OF REQUEST LETTER DTD 6.8.88 MADE BY NEDUNGADI WEAR HOUSE.

EXT.R7(c) COPY OF REQUEST LETTER DTD 6.8.88 MADE BY NEDUNGADI AGENCIES.

/TRUE COPY/

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ANTONY DOMINIC, J.

O.P.NO.26162 OF 2000-M

Dated this the 12th day of September, 2007.

JUDGMENT

The writ petitioners challenge Ext.P4 order issued by the 1st respondent under Section 7 A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. By Ext.P4 it has been held by the 1st respondent that the establishments P.K. Nedungadi and Brothers (White Shop), Saree Museum and Nedungadi Bit Shop are liable to be clubbed under Section 2 A of the E.P.F Act. It is pointed out that though these establishments did not have adequate employee strength for coverage under the Act, they opted for voluntary coverage. Ext.P1 is an order dated 3.12.1997 covering the establishment P.K.Nedungagi & Brothers under Section 14 of the Act with effect from 1.11.1977. Similarly, so far as the Saree Museum is concerned, the petitioners have opted for voluntary coverage with effect from 1..11.1977. Similar is the case of Nedungadi Bi t Shop which though is a proprietary concern, the voluntary coverage has been made with effect from 21.1.1987. It is pointed out that in terms of the voluntary coverage that was opted to by the parties, these establishments were paying the contribution

at the rates as specified.

2. While this position was continuing as such, Ext.P2 notice was issued by the 1st respondent calling upon the petitioners to show cause as to why the aforesaid three establishments and two other establishments should not be clubbed for the purposes of the E.P.F.Act. On receipt of the notice, they filed their objections as per Ext.P3. Thereafter, an enquiry as contemplated under Section 7 A was conducted and by Ext.P5 order, the coverage was ordered as stated above. Challenging Ext.P5 and seeking consequential reliefs that this writ petition has been filed. A counter affidavit has been filed by the respondents justifying Ext.P4. I heard the learned counsel for the petitioners and the respondents.

3. Although the proposal was to club the five establishments, by Ext.P3, clubbing has been ordered only in respect of P.K.Nedungadi & Brothers, Saree Museum and Nedungadi Bit Shop. On a reading of the order, it is evident that the authority was led to come to the conclusion on the basis that the establishments in question were located in the same premises with a common entry point. It is also found that these establishments are partnership firms and many of the partners are common and that these firms

are under the common management of one of the partner. On that basis, it is it is found that these establishments are closely connected, inter related and commonly managed. It is pursuant to this finding that the 1st respondent ordered clubbing of the establishments and directed that the clubbed establishments have to pay 12% contribution as against 10% which was being paid.

4. It is beyond dispute that, in terms of Section 2 A, the authorities are entitled to club establishments which have different departments and branches. The section by itself does not indicate the basis on which the power should be invoked, but this has been indicated in the various pronouncements of this Court as well as the Apex Court. The unity of ownership, management and control, unity of employment and conditions of service, functional integrality and general unity of purpose have been indicated as some of the factors that are relevant while determining the issue. It has also been held that the conduct of the employer in mixing or not mixing up the capital, staff and management also throw light to the question.

5. On an examination of the totality of the circumstances and on going through Ext.P4 order, I notice that the factors that have

been relied on by the authorities to club the aforesaid establishments are that location of the establishments is in one building and that the three establishments are under the management of one common managing partner who is common and that the firm have common partners also. These three factors, by themselves are insufficient to come to the finding that the three establishments are liable to be clubbed. Therefore, Ext.P4 cannot be sustainable and accordingly, Ext.P4 will stand quashed.

The 1st respondent is directed to re-consider the matter afresh with notice and opportunity to the petitioners and take a fresh decision in accordance with law. This shall be done within a period of three months from the date of receipt of a copy of this judgment.

ANTONY DOMINIC, JUDGE.

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ANTONY DOMINIC, J.

O.P.NO.26162 OF 2000-M

JUDGMENT

12th September, 2007.